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Note verbale dated 26 October 2004 from the Permanent Mission of Spain to the United Nations addressed to the Chairman of the Committee

The Permanent Mission of Spain to the United Nations presents its compliments to the Chairman of the Committee and has the honour to transmit herewith, for distribution to the Member States of the Organization, a copy of the national report prepared by Spain pursuant to paragraph 4 of Security Council resolution 1540 (2004) (see annex).

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Annex to the note verbale dated 26 October 2004 from the Permanent Mission of Spain to the United Nations addressed to the Chairman of the Committee

National report submitted by Spain pursuant to Security Council resolution 1540 (2004)

Preliminary observations

The adoption of Security Council resolution 1540 (2004) on 28 April 2004 is a milestone in the international community's determination to combat the proliferation of weapons of mass destruction and terrorism.

As one of the States that co-sponsored the resolution, Spain appeals for the active participation of all Members of the United Nations in the work cycle just beginning. Resolution 1540 is a valuable frame of reference for developing the dialogue and consultation so vital for resolutely addressing the existing challenges. In this connection, Spain wishes once more to reaffirm that it is of the utmost importance in this process to maintain and strengthen international cooperation (in the spirit of *effective multilateralism*) as the essential instrument for safeguarding and promoting peace and security.

Report

Paragraph 1: Decides that all States shall refrain from providing any form of support to non-State actors that attempt to develop, acquire, manufacture, possess, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery.

Spain fully assumes its responsibilities and commitments in the struggle against the proliferation of weapons of mass destruction and neither supports nor collaborates in any way with non-State actors participating in the activities described. The Spanish authorities are fully aware of the danger posed by proliferation and zealously monitor and follow such actions. Spain, which is in the vanguard of the war on terrorism being waged in multilateral forums, hopes that international cooperation and consultation can be intensified to address the issue of non-State actors.

Paragraph 2: Decides also that all States, in accordance with their national procedures, shall adopt and enforce appropriate effective laws which prohibit any non-State actor to manufacture, acquire, possess, develop, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery, in particular for terrorist purposes, as well as attempts to engage in any of the foregoing activities, participate in them as an accomplice, assist or finance them.

Spanish legislation covers a variety of scenarios involving the use or operation of weapons and technologies of mass destruction, with prohibitions and criminal penalties in the event of infringement.

Activities relating to nuclear weapons are covered by various criminal offences in articles 341 to 345 of the Criminal Code (Organic Law 10/1995 of 23 November 1995), which refer to "*crimes relating to nuclear power*". These are broad-ranging: *release of nuclear power or radioactive elements that endanger the lives or health*

of persons or their property, even if no explosion is involved, interference with the functioning of nuclear or radioactive facilities, production of dangerous radiations and acquisition, receipt, trade, transport, possession or unauthorized use (even if not for profit) of nuclear materials or radioactive elements, and other activities subject to severe prison sentences.

The obligation to establish a criminal penalty for activities involving chemical weapons and biological or toxin weapons stems from the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction (Chemical Weapons Convention) and the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction (Biological Weapons Convention) and has been enforced in successive redrafts of the Spanish Criminal Code. In its current version, enacted by Organic Laws 2/2000 of 7 January 2000 and 15/2003 of 25 November 2003, articles 561, 566, 567 and 568 of the Criminal Code specifically define the crimes of manufacture, development, stockpiling, use and trade (both purchase and sale) of chemical and biological weapons, including possession and commission of acts preparatory to these activities, and "*scientific and technical research geared to the creation of a new chemical or biological weapon or the transformation of an existing one*", as well as threatened use of chemical or biological and toxin weapons (even if the threat is not substantiated by possession of weapons). Criminal law specifies various prison sentences for such acts and expressly mentions the applicable international conventions and treaties.

Paragraph 3: Decides also that all States shall take and enforce effective measures to establish domestic controls to prevent the proliferation of nuclear, chemical or biological weapons and their means of delivery, including by establishing appropriate controls over related materials and to this end shall:

(a) *Develop and maintain appropriate effective measures to account for and secure such items in production, use, storage or transport.*

With regard to nuclear material, within the European Union, to which Spain belongs, the application of nuclear safeguards is a matter for the Commission of the European Communities, under the EURATOM Treaty. Moreover, the Commission also exercises responsibilities deriving from safeguards agreements signed by member States of the European Union with the International Atomic Energy Agency in accordance with INFCIRC 193 and INFCIRC 540). Spain has ratified the Protocol Additional to the Safeguards Agreement (which entered into force on 30 April 2004) and has also undertaken to introduce the legislative amendments needed to incorporate the recommendations of the Agency's Code of Conduct on the Safety and Security of Radioactive Sources (signed in April 2004). An independent government body, the Nuclear Safety Council (established by Act 15/1980 of 22 April 1980) is responsible for nuclear safety and the protection of radiological sources on Spanish territory. Other applicable legal instruments include the *Convention on Nuclear Safety* of 20 September 1994 and the *Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management* of 5 September 1995, both of which Spain has ratified. In the area of domestic legislation, the relevant laws are Act 25/1964 of 29 April 1964 on Nuclear Energy (which has been updated on several occasions), the Regulations on Nuclear and Radioactive Facilities (Royal Decree 1836/1999) and the Regulations for the

protection of health against ionizing radiation (Royal Decree 783/2001). Still pending in Spain (until 2005) is the transposition of Council Directive 2003/122/EURATOM of the Council of the European Union, on sealed radioactive sources and orphan sources.

Regarding materials connected with the production of chemical weapons, and without prejudice to the applicable provisions of the Chemical Weapons Convention, the law in force is Act 49/1999 on measures for the control of chemical substances that could be diverted for the manufacture of chemical weapons, which establishes appropriate control mechanisms (licensing systems and official logs of pertinent activities in this field). Royal Decree 663/1997 established the National Authority for the Prohibition of Chemical Weapons (ANPAQ), which currently reports to the Ministry of Industry, Tourism and Trade and is responsible for ensuring Spain's fulfilment of its obligations under the Chemical Weapons Convention.

With regard to materials connected with the production of biological weapons, the applicable provisions are to be found in Act 15/1994 on Biosafety and its regulation contained in Royal Decree 951/97 and in Royal Decree 664/1997 of 12 May 1997 (and others updating it). There is currently no body similar to ANPAQ to centralize tasks relating to the non-proliferation of biological agents and biosafety, although the need for such a mechanism is being considered.

(b) *Develop and maintain appropriate effective physical protection measures.*

Spain is a party to the Convention on the Physical Protection of Nuclear Material of 3 March 1980 (INFCIRC 274), the provisions of which are incorporated in various legal instruments such as the Regulations for the physical protection of nuclear materials (Royal Decree 158/1995). It should be noted that Spain supports the revision of the Nuclear Material Convention and the holding of a diplomatic conference to that end. Lastly, Spain participates in the IAEA database on illicit trafficking in radioactive material.

The provisions referred to in the previous paragraph also apply to chemical and biological and toxin material.

(c) *Develop and maintain appropriate effective border controls and law enforcement efforts to detect, deter, prevent and combat, including through international cooperation when necessary, the illicit trafficking and brokering in such items in accordance with their national legal authorities and legislation and consistent with international law.*

In Spanish legislation, border controls to combat illicit trafficking and trade are established in Organic Law 12/1995 of 12 December 1995 on *Suppression of Smuggling*, which gives the competent authorities (the customs administration) the necessary authority to investigate and prosecute banned activities. Specific mention is made of trade in military end-use and dual-use items (articles 1.8 and 1.9). This law authorizes the competent bodies and services to contact and exchange information with counterparts in other countries (supplementary provision 1.3).

(d) *Establish, develop, review and maintain appropriate effective national export and trans-shipment controls over such items, including appropriate laws and regulations to control export, transit, trans-shipment and re-export and controls on*

providing funds and services related to such export and trans-shipment such as financing, and transporting that would contribute to proliferation, as well as establishing end-user controls; and establishing and enforcing appropriate criminal or civil penalties for violations of such export control laws and regulations.

The control of exports and shipments of dual-use items and technology is regulated in the European Union in Council Regulation (EC) No. 1334/2000 of 22 June 2000 and Regulation (EC) No. 1504/2004 of 19 July 2004 amending and updating it. In order to introduce and supplement appropriate control measures to guarantee enforcement of these provisions, and in compliance with the obligations deriving from the Chemical Weapons Convention and the Biological Weapons Convention, the Spanish Government recently adopted Royal Decree 1782/2004 of 30 July 2004, updating and revising earlier legislation by introducing a new *Regulation on control of foreign trade in material for military end-uses, other material and dual-use items and technology*. In accordance with the provisions of this Regulation, an administrative authorization or licence system is in existence for foreign trade in material for military end-uses, other material and dual-use items and technology included in the control lists, and for operations involving other unlisted products, when their "*purpose is or may be to contribute, entirely or partly, to the development, production, operation, functioning, maintenance, stockpiling, detection, identification or proliferation of chemical, biological or nuclear weapons or other explosive nuclear devices, or to the development, production, maintenance or stockpiling of missiles capable of delivering such weapons*". Also covered by these provisions are intangible transfers (such as technical assistance that could be intended for weapons of mass destruction and their means of delivery, including via electronic media and oral assistance, even if it takes place outside the territory of the European Community) and specific references are made to the applicable international treaties. The Regulation also provides for other control mechanisms, such as compulsory registration in a special registry of foreign-trade operators and formal and documentary requirements specified by law for transactions and formalities.

At the same time, regarding criminal penalties, it should be pointed out that, in addition to the above information on Criminal Code provisions concerning use of and trafficking in technologies of mass destruction, also applicable are the provisions of the aforementioned Organic Law 12/1995 on *Suppression of Smuggling*, which classifies as a crime (among other actions) the unauthorized, or fraudulently authorized, export of military end-use or dual-use material (article 2.1.j).

Paragraph 5: Decides that none of the obligations set forth in this resolution shall be interpreted so as to conflict with or alter the rights and obligations of State Parties to the Non-Proliferation Treaty, the Chemical Weapons Convention and the Biological and Toxin Weapons Convention or alter the responsibilities of the International Atomic Energy Agency or the Organization for the Prohibition of Chemical Weapons.

Spain is a party to the above-mentioned treaties and a member of IAEA and the Organization for the Prohibition of Chemical Weapons and participates actively in the negotiations being held in the Conference of States Parties to the Biological Weapons Convention (according to the programme of work adopted in 2002 for strengthening the implementation of the Convention). Compliance in good faith

with resolution 1540 implies no contradiction with the three aforementioned Conventions: on the contrary, the process of implementing this resolution should lead to reinforcement of the multilateral system, with the introduction of new mechanisms, such as verification in connection with the Biological Weapons Convention.

Paragraph 6: Recognizes the utility in implementing this resolution of effective national control lists and calls upon all Member States, when necessary, to pursue at the earliest opportunity the development of such lists.

Spain is an active member of various international export control regimes (Nuclear Suppliers Group, Zangger Committee, Australia Group, Missile Technology Control Regime, Wassenaar Arrangement). Within the framework of those regimes and of the European Union (which also has control mechanisms), various procedures, control lists and information exchange protocols are being developed and maintained. An essential instrument in this activity is the lists contained in the annexes to the European Dual-use Regulation and the *External Trade Control Regulation* (aforementioned Regulation EC 1504/2004 of 19 July 2004 and Royal Decree 1782/2004).

Spain strongly advocates general adoption of export control regimes, which represent an advanced form of cooperation among States, and inclusion in these forums (with appropriate guarantees) of all interested countries. The issues of terrorist activity and non-State actors could be very effectively addressed using these systems.

Paragraph 7: Recognizes that some States may require assistance in implementing the provisions of this resolution within their territories and invites States in a position to do so to offer assistance as appropriate in response to specific requests to the States lacking the legal and regulatory infrastructure, implementation experience and/or resources for fulfilling the above provisions.

Spain appreciates that some States may encounter difficulties and request assistance for the proper fulfilment of the obligations deriving from international treaties and from resolution 1540 (among other non-proliferation instruments). The Spanish authorities have cooperated with other countries on various occasions, especially within the Organization for the Prohibition of Chemical Weapons and IAEA, to lend assistance (legal, technical and financial) for alleviating such situations. Spain has contributed and continues to contribute to the IAEA Technical Cooperation Fund and Nuclear Security Fund. Mention should also be made of the fact that Spain's National Authority for the Prohibition of Chemical Weapons (ANPAQ) has, in collaboration with the Organization for the Prohibition of Chemical Weapons, undertaken training activities to fulfil its obligations under the Chemical Weapons Convention (including Technical Events in 2002, 2003 and 2004).

Paragraph 8: Calls upon all States:

(a) *To promote the universal adoption and full implementation, and, where necessary, strengthening of multilateral treaties to which they are parties, whose aim is to prevent the proliferation of nuclear, biological or chemical weapons.*

As a State party to all the universal multilateral treaties on the non-proliferation of weapons of mass destruction, Spain is resolutely committed to

maximum participation, effective fulfilment and strengthening of such legal systems. Both on its own and within the European Union, Spain is constantly taking measures to promote the universalization and development of these instruments (the Non-Proliferation Treaty, the Chemical Weapons Convention, the Biological Weapons Convention, the Protocol Additional to the Safeguards Agreements, the Comprehensive Nuclear-Test-Ban Treaty and the Hague Code of Conduct against Ballistic Missile Proliferation). In that connection, mention may be made of initiatives such as the *Common Position* adopted by the European Union in November 2003 *on the universalization and reinforcement of the main multilateral agreements on disarmament and non-proliferation*, and the measures contained in the EU *Strategy against Proliferation of Weapons of Mass Destruction* (December 2003). One especially interesting initiative among these measures is the inclusion of a non-proliferation clause in European Union agreements with third countries, which can significantly contribute to the strengthening of the international community's positions on non-proliferation. Broadly speaking, Spain is and will continue to be active in the follow-up to the United Nations Security Council resolutions 1540 (non-proliferation and non-State actors) and 1373 (terrorism), including those that develop and supplement the latter: resolutions 1377 (2001), 1456 (2003), 1535 (2004) and 1566 (2004).

(b) *To adopt national rules and regulations, where it has not yet been done, to ensure compliance with their commitments under the key multilateral non-proliferation treaties.*

Spain has adopted the legal and statutory provisions needed to incorporate the obligations and commitments under the key disarmament and non-proliferation treaties into domestic legislation (the measures have been explained in detail in other sections of this report). The Spanish authorities consider that they have made the required incorporation. However, and without prejudice to the foregoing, Spain remains open to all dialogue aimed at identifying other ways of fulfilling those obligations.

(c) *To renew and fulfil their commitment to multilateral cooperation, in particular within the framework of the International Atomic Energy Agency, the Organization for the Prohibition of Chemical Weapons and the Biological and Toxin Weapons Convention, as important means of pursuing and achieving their common objectives in the area of non-proliferation and of promoting international cooperation for peaceful purposes.*

Spain firmly believes in multilateral cooperation as a means of achieving the objectives of disarmament and non-proliferation and participates as a contributor, a voluntary donor and executing agent in many projects implemented in international organizations, while maintaining bilateral cooperation in this field (more details on this subject have been provided in our comments on paragraph 7).

(d) *To develop appropriate ways to work with and inform industry and the public regarding their obligations under such laws.*

The Spanish authorities appreciate the important contribution of civil society and industry (among other outstanding actors) to the implementation of non-proliferation policies. Important objectives in this field are achieved through public information on laws and international commitments. There are also other aspects of collaboration with industry and the public: for instance, awareness-raising and

information on the security risks posed by the proliferation of weapons of mass destruction and terrorism, not to mention the necessary reference to individual and collective obligations and penalties for non-fulfilment of those obligations. Spanish legislation provides for various mechanisms for consultation and information among bodies involved in technologies relating to nuclear power or to weapons of mass destruction (e.g. the Nuclear Safety Council, ANPAQ, etc.) and the sector industry, with the holding of meetings and seminars. These bodies participate, as advisers and observers, in the inspection processes conducted in accordance with international verification systems established in the treaties (safeguards agreements, Additional Protocol, Chemical Weapons Convention, etc.).

Paragraph 9: Calls upon all States to promote dialogue and cooperation on non-proliferation so as to address the threat posed by proliferation of nuclear, chemical or biological weapons, and their means of delivery.

In the context of *effective multilateralism* referred to in various documents, including the European Union Strategy against the Proliferation of Weapons of Mass Destruction, Spain firmly supports dialogue and cooperation in the various international forums for generating responses and strategies in the struggle against proliferation and terrorism. Spain understands that in this dialogue and cooperation it is important to assign a degree of priority to the fulfilment of international obligations, and to the mechanisms of transparency and verification and that, at the same time, the objective of non-proliferation cannot be divorced from disarmament objectives and commitments. At another level, it should be noted that the above-mentioned European Union Strategy also covers, in addition to this field, a very interesting concept: the need for a cross-cutting approach and comprehensive action, absorbing the repercussions and commitments of our non-proliferation policies into our economic and trade policies.

Paragraph 10: Further to counter that threat, calls upon all States, in accordance with their national legal authorities and legislation and consistent with international law, to take cooperative action to prevent illicit trafficking in nuclear, chemical or biological weapons, their means of delivery and related materials.

In consultation with other friendly and allied countries, and without prejudice to its commitments within the multilateral institutions, Spain is acting, with due respect for international law, to promote and implement action to prevent illicit trafficking in nuclear, chemical and biological weapons, their means of delivery and related materials. Mention has been made in other sections of this report of Spain's presence in export control bodies and the implementation of bilateral cooperation projects.

Attention may also be drawn here to Spain's active participation in measures such as the Proliferation Security Initiative (PSI), one of whose first meetings was held in Madrid (June 2003). Spain was one of the 11 founding members of PSI, which many other countries later joined. This mechanism aims to establish cooperation systems for intervention and interception, in accordance with the applicable rules of international law, of shipments or cargoes of technologies and materials relevant to proliferation. Spain has organized an operational exercise and is preparing another for 2005.

In consultation with other countries, Spain hopes to intensify its activities in this area. In particular, Spain has participated as an observer in working sessions of

the G-8 Global Partnership against the Spread of Weapons and Materials of Mass Destruction and the Global Threat Reduction Initiative. New forms of participation are under study.

Additional notes

More information on the Spanish Government's activities and commitments is available on the web site of the Ministry of External Affairs and Cooperation of the Kingdom of Spain (www.mae.es and www.nuevo.maec.es).

Note on the report submitted by the European Union

Since Spain is a member of the European Union, reference is made to the European Union Common Report that will be transmitted separately to the Special Committee of the United Nations Security Council. This EU report covers areas and activities in relation to Security Council resolution 1540 (2004) and should be read in conjunction with this national report.